

Decision Notice

Cottonwood Creek Rehabilitation and Native Salmonid Reintroduction

July 23, 2002

Proposal

The proposed action is to chemically rehabilitate Cottonwood Creek, a tributary to Holter Reservoir located on the Beartooth Game Range, using two treatments of the piscicide rotenone. The goal of the treatment would be to eradicate nonnative brook and rainbow trout above a newly installed fish barrier. Then, over the next several years, the stream would be restocked with genetically pure, native westslope cutthroat trout from an existing population in the Missouri River that has been shown to be at high risk of extinction. Some of the application techniques used to apply rotenone will include; drip stations, powered rotenone “dough balls”, and manual backpack spraying. Multiple application methods are required to effectively treat a variety of habitat types that exist in Cottonwood Creek.

Cottonwood Creek has no record of being stocked by MFWP and the current fish assemblage in the stream originated from unknown sources. MFWP chemically rehabilitated neighboring Elkhorn Creek in 1972 after constructing an upstream fish barrier. This barrier and nonnative removal is one of the earliest westslope conservation activities in Montana. Recent survey work has demonstrated that after nearly 30 years, this project remains a success; the Elkhorn creek westslope cutthroat population is one of the most secure, genetically pure populations in the Upper Missouri drainage. It is the goal of this project to duplicate the success of the Elkhorn project.

This EA was completed in 2001 with a proposed chemical treatment date of August 2001. The project was not completed in 2001 due to concerns that Eastern Brook trout could be in the early stages of spawning. The possibility that brook trout eggs may have been fertilized and incubating in gravels would have compromised the objective of total fish removal, as the piscicide rotenone does not kill eggs in the incubation stage. Therefore the EA was reissued in 2002 with a proposed treatment dates in July (pre-brook trout spawn). Two chemical application periods are proposed in 2002 to insure complete removal of fish in the treatment reach.

Environmental Policy Act Process

Montana Fish, Wildlife & Parks (FWP) is required to assess potential impacts of the proposal to the human and physical environment. In compliance with requirements of the Montana Environmental Policy Act (MEPA), an Environmental Assessment (EA) was completed by FWP and released for public comment in July 2001 and again in April 2002. There are no ground disturbing actions proposed on forest system lands that would require the U.S. Forest Service to complete and analysis under the National Environmental Policy Act.

Public comments on this project were taken for 36 days in 2001 (July 20th, 2001 to August 24, 2001) and 45 days in 2002 (April 12th, 2002 to May 15th, 2002). The EA was discussed at a meeting of the Devils Kitchen Workgroup in July 2001. This is a group of ranchers, sporting group representatives and other interested members of the public organized to discuss resource management issues in the general area between Helena and Great Falls, Montana. The EA was mailed to 34 individuals/groups on the FWP's MEPA mailing list in 2001 as well as several individuals that individually requested the document. News releases and Legal Notices, which announced the availability of the EA, were published in the Helena Independent Record and the Great Falls Tribune in 2001.

Issues raised during the public comment period on the EA are addressed in the comment section of this Decision Notice. There are no modifications to the Draft EA based on public comment, and the Draft EA and Decision Notice serve as the final document.

Summary of Issues Addressed in the Environmental Assessment

The EA lists the issues in detail. These include:

- Threats to native species (Westslope cutthroat trout).
- Current distribution of WCT in the Upper Missouri Basin.
- Costs of restoration.
- Effects of rotenone on non-target species and humans.
- Effects of WCT restoration on invertebrates and amphibian species.
- Recreational fishing opportunities.
- Effects on Livestock operations.

Summary of Public Comment

At the close of the comment period, August 24th, 2001, FWP had received a total of 2 written comments. Both comments were letters submitted and one comment was in favor and the second was in opposition. No comments were received following the 45-day posting of the EA on the MFWP website in 2002.

Written Comments on the Proposal

Comment 1. (8/22/2001) We support the proposed rehabilitation of Cottonwood Creek on the Beartooth Wildlife Management Area. Restoration of a westslope cutthroat population in this stream would be an important step toward improving the status of this imperiled native trout species in Central Montana.

Response: The department concurs.

Comment 2. (8/17/2001) We would like to go on record in opposition of this project for the following reasons:

1. Rotenone, is a chemical that is currently under review by the Environmental Protection Agency; therefore we feel that the use of this chemical could violate laws set forth under the Environmental Protection Agency.

Response: Rotenone is under review by the EPA under a process mandated by the U.S. Congress in 1998 in amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This requires the EPA to review chemicals that had been registered prior to the passage of the 1988 amendments. An important part of the review process is where the EPA requires manufacturers to conduct new studies or fill data gaps that are needed to prove the safety of a chemical for humans or non-target organisms. According to a representative from Prentiss (a rotenone manufacturing company), all requests by EPA for information have been met. The EPA has said that the final decision on rotenone may still be several years away. In the meantime, rotenone remains a viable, legally registered product with the EPA and the State of Montana.

2. The use of chemicals in the waters of Montana, constitute a violation of the new Montana law that guaranteed Montanans a clean and healthy environment.

Response: In Fairhurst v. MDEQ and MFWP (Case No. BDV-2000-672) dated 28 March, 2002, Judge Jeffery M. Sherlock ordered that Fairhurst's petition for judicial review was denied and Fairhurst's request for a declaratory judgment that Section 75-5-317(2)(g), MCA, violates the Montana Constitution was also denied. With this ruling, the issuance of DEQ's 308 permit determines that the application of pesticides on a short-term basis is deemed a nonsignificant activity. Pertinent authorized activities under section 75-5-308(1)(b), MCA include the application of pesticides registered by the EPA..., "to eliminate undesirable and nonnative aquatic species."

3. Montana Department of Environmental Quality, must review this proposal and award a permit for the discharge of a chemical into the waters of Montana. There is currently a case

pending on such a request for permit, and this case must be litigated to the satisfaction of the courts of Montana.

Response: MFWP will submit an application to MDEQ for 308 permit (Application for short-term exemption from surface water quality standards for emergency remediation/pesticide application). See Question #2 response.

4. As in the case of Cherry Creek, Staubach Creek and the lakes and streams within the Great bear and Bob Marshal Wilderness areas, we feel under the laws of NEPA, the public has not been afforded the facts to make an educated judgment on this issue.

Response: The proposed chemical treatment of Cottonwood Creek (Beartooth WMA) does not include treatment activities on any federal land; only MFWP and privately owned land. Therefore NEPA level review is not required. However, in the case of Cherry Creek and Staubach Creek proposals, NEPA level analysis was completed and requirements were satisfactorily met.

Decision

Based on the Environmental Assessment, public comment, and the high risk of extinction of genetically pure WCT in the Upper Missouri Basin, it is my decision to proceed with the restoration project to remove fish in the stream reach above the artificial fish barrier on Cottonwood Creek (Beartooth Wildlife Management Area) and attempt to establish a pure strain population of WCT after the chemical rehabilitation project is completed. This alternative provides the best opportunity to benefit the conservation and restoration of WCT in Montana, help relieve ESA listing pressure and also serve as to illustrate the State's commitment to perpetuating native fish species.

This project will help secure pure WCT in the Upper Missouri Basin by expanding their distribution to approximately 10.5 additional stream miles, and could provide a "genetic reserve" for a population deemed to have a high risk of extinction. I find there to be no significant impact on the human or physical environment associated with this project, except to help ensure the long-term persistence of pure, locally adapted WCT in the Upper Missouri Basin. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

Mike Aderhold
Mike Aderhold
Region 4 Supervisor
Great Falls, Montana

July 24, 2002
Date